1944

File No. Restri. and Detention II/44

Legal Department

B. **BRANCH**

Subject:–

'Kules and Votifications under the Restriction and Detention ordinance 1944

E page-14 1944

File No. Restri. and Detention II/44

Gen. 194 e.

290-B

Office of the R.L.A.

Though the Security Prisoners Detention Conditions Order, 1942, was made as an 'order' under sub-rules (5) and (5A) of rule 26 of the Defence of India Rules, the said order is more correctly a 'determination' within the provision of the said sub-rules rather than an 'order'. The corresponding provision in the Restriction and Detention Ordinance, 1944, namely section 3(4) and (5) provides for the making of an 'order' for the purpose in place of 'determination'. So far as the R.L.A. can recollect the Government of India had referred to and explained this subtle change at the time of enacting the Restriction and Detention Ordinance; (Papers are with H.D.). Since as advised by the Government of India it is a matter of doubt if a determination is an order, and since section 6 of the Ordinance validates orders but not determinations made under rule 26 of the Defence of India Rules, it is not legally feasible to amend the Security Prisoners Detention Conditions Order, 1942, as proposed in the H.D. draft at p. 73. The legally appropriate course is to reissue the whole order when finalised with all amendments as a fresh 'order' in exercise of the powers under section 3(4) and (5) of the Ordinance; (and to cancel the existing Security Prisoners Detention Conditions Order, 1942, ex majore cautela for avoiding confusion, for though rule 26 of the Defence of India Rules has not been repealed, its force has merged in the Ordinance by virtue of section 6(2) of the Ordinance). The Government of India

AR
16/7

K.S.R.
16/7

The Government of India have themselves followed such a course and appear to advise it in their express letter No. 44/57-(Poll) - I, dated 15th January 1944 of which H.D. have kept an extract at p. 47 ante.

H.D. is therefore requested to finalise and send the whole of the Order for being issued under the enabling powers of the Ordinance. Since the proposed draft rule 15(2) is based on certain correspondence with the High Court as stated in Secretary, H.D's note on p. 68 ante, H.L.A. may be shown the correspondence also when the whole order is next referred to H.L.A. for scrutiny.

Id/-
P.H.H.
30/3/44.
Remembrancer of Legal Affairs.

U.O. to H.D., No. 125- Confl, dated the 30th March 1944.

SSH / 14/7/56.

Office of the R.L.A.

The draft Order at pages 83-97 ante, amended, is in order.

2. Clause 2(b) has been suitably amended in view of the provisions of section 6(2) of the Restriction and Detention Ofdinance, 1944.

3. Clause 4A in the W.D. draft has been renumbered as clause 5 and subsequent clauses have been renumbered and cross references corrected, wherever necessary.

4. The Security Prisoners Detention Conditions Order, 1942 requires to be cancelled separately. In this behalf is sent herewith. This should be issued The requisite draft Order simultaneously with the proposed new Order.

Remembrancer of Legal Affairs.

U.R. to W.D., No. 209- Confl., dated the 10th May 1944.

SSM / 14/7/56.

ORD R.

Home Department.

Bombay Castle, 1944.

The Government of Bombay is hereby pleased to cancel the Security Prisoners Detention Conditions Order, 1942.

By order of the Governor of Bombay,

Secretary to Government.

Office of the R...A.

The draft Order at page 49 ante, as very slightly amende, is in order.

2. Section 7 of the Ordinance provides that when an order is made in respect of any person under clause (b) of sub-section (1) of section 3, as soon as may be after the Order is made, the authority making the order shall communicate to the person affected thereby, ... the grou-grounds on which the Order has been made against him and such other particulars as are in the opinion of such authority sufficient to enable him to make if he wishes a representation against the Order. The provisions of this section are mandatory. Consequently, when fresh orders are made under section 3(1) (b) it will be necessary to issue a notice as required by the provisions of section 7. The argument that fresh detention Orders would be issued merely on technical grounds and would, in effect be the same as extension orders is untenable since the orders would not be issueden on technical ground but because the existing order is invalid and fresh order is not the same as an extensio order, since the latter can operate only if there is in existence an original and valid detention order.

3. When detenues are released on parole it is understood that an order in the form at page 53 post is served on the detenue concerned. From this order it is noticed that the original order of detention is

of detention is superseded (vide also margin on page 46 ante). After the period of parole (which is specified in the order), the person concerned is again served with an order in the form at page 55 post. The latter order is issued because the original order of detention is cancelled and in order to detain a person, a fresh order is necessary under section 3(1)(b). As stated above the provisions of section 7 are mandatory and therefore when an order is made afresh in respect of any person under section 3(1)(b), the authority making the order has to communicate the grounds on which the order is made against him although such grounds may be the same as those for which he was detained previous to his release on parole. The view expressed by the A.G. in this respect appears to be correct.

Id/-
A.N.M.
19/6/44.

Remembrancer of Legal Affairs.

J.R. to H.D. ~~(Political~~ (Special), No. 27-p. Confl. dated the 19th June 1944.

SSM / 14/7/56.

Office of the R.L.A.

The form of Order adopted by the C.P. Government releases on parole a security prisoner subject to certain conditions. For example, the form at slip J releases the security prisoner on parole for one month in order to make arrangements for the medical treatment of his wife at Bombay on the following conditions:-

(i) that he gives a written undertaking that he will take no part in any political or public activity during parole;

(ii) that he will not leave Nagpur without the knowledge and consent of the Provincial Government and will at intimate the date and time of his departure for Bombay;

(iii) that when he is permitted to go to Bombay he will report himself to the Commissioner of Police, Bombay, on arrival and thereafter to a Police Officer prescribed by the Commissioner of Police, Bombay, as often as he is directed to do so;

(iv) that he will surrender himself at the Central Jail, Jubbulpore, on the expiry of 1 month from the actual date of his release.

It is true that the C.P. Government's Order does not like the Bombay Government's Order supersede the order of detention already passed against a security prisoner, but since that order releases a security prisoner for the time being, it does not make any difference in the legal position.

For the reasons stated in H.L.A's opinion No. 54-Confl., dated the 4th February 1941 (which equally applies in the case of detention under Section 3 of the Restriction and Detention Ordinance) the effect of releasing a person ~~is~~ who is detained under an order passed under section 3 of the Ordinance will be that such order will cease to be in force and it will be necessary to issue a fresh order under that section if such person is to be detained again. As already stated in H.L.A's opinion No. 27-P-Confl., dated the 19th June 1944, when an order is made afresh in respect of any person under section 3(1)(b), the authority making the order has to communicate to the detenue the grounds on which the order is made against him although such grounds may be the same as those for which he was detained previous to his release on parole. The adoption of the form in which the C.P. Government issues its order for releasing security prisoners on parole will not therefore serve to avoid issuing fresh detention orders and fresh notices of the grounds of detention.

Id/-
P.N.H.
30/6/44.

Remembrancer of Legal Affairs.

U.R. to H.D. (Special), No. 42-P-Confl, dated the 30th June 1944.

SSM / 4/7/56.

Office of the R.L.A.

Since as stated in the letter of the Superintendent of Police, C.I.D. at page 23 ante, according to the instructions of the Government of India the security prisoners in question have to be detained in the Red Fort, Delhi it would be sufficient for the present if the orders at pages 13 and 15 ante are modified so as to secure the detention of the prisoners in the Red Fort. Two draft orders, one in the case of the security prisoner Pratap Keshavlal and another in the case of security prisoner Khalil Sharafuddin, are sent herewith.

Remembrancer of Legal Affairs.

U.O. to H.D. (Special), No. 176-P-Confl., date the 24th October 1944.

SSM / 14/7/56.

I

Draft Order.

Home Department (Political)-Mr,

Council Hall, Poona, October 1944.

No. .- Whereas by Government Order No. S.D.V/153, dated the 26th September 1944 issued under section 3 of the Restriction and Detention Ordinance, 1944 (Ordinance No. III of 1944), the Government of Bombay directed that the person known as Pratap Keshavlal Shah alias Jiwanlal Maganlal Shah be detained in a jail in Delhi;

And whereas the consent of the Central Government has been obtained to the detention of the said Pratap Keshavlal Shal alias Jiwanlal Maganlal Shah in the Red Fort, Delhi;

Now, therefore, in exercise of the powers conferred by sub-section (4) read with sub-section (5) of section 3 of the said Ordinance and in partial modification of the said Government Order No. S.D.V/-193 dated the 26th September 1944, the Government of Bombay is pleased to direct that the said Pratap ~~Keshavlal~~ Keshavlal Shah alias Jiwanlal Maganlal Shah be detained in the Red Fort, Delhi.

By order of the Governor of Bombay,

Secretary to Government.

II

Draft Order.

Home Department (Political)-War,
Council Hall, Poona, October 1944.

No. Whereas by Government Order No. S.D.V-153, dated the 26th September 1944 issued under section 3 of the Restriction and Detention Ordinance, 1944 (Ordinance No. III of 1944), the Government of Bombay directed that the person known as Khalil Sharafuddin be detained in a jail in Delhi;

And Whereas the consent of the Central Government has been obtained to the detention of the said Khalil Sharafuddin in the Red Fort Delhi;

Now, therefore, in exercise of the powers conferred by sub-section (4) read with sub-section (5) of section 3 of the said Ordinance and in partial modification of the said Government Order No. S.D.V/-153, dated the 26th September 1944, the Government of Bombay is pleased to direct that the said Khalil Sharafuddin be detained in the Red Fort, Delhi.

By order of the Governor of Bombay,

Secretary to Government.

SSM / 14/7/56.

Office of the R.L.A.

Two revised orders are sent herewith for service on the two persons respectively. They are settled by me, as R.L.A. is not attending office to-day.

Deputy Secretary to Government,
Legal Department.

U.R. to B... (Spl.) No. 364-Confl. dated the 29th Nov. 1944.

S.N / 14/7/56.

No.

ORDER.

Whereas by Government Order No. S.D. V/-153, dated the 26th September 1944 issued under section 3 of the Restriction and Detention Ordinance, 1944(Ordinance No. III of 1944), the Government of Bombay directed that the person known as Pratap Keshavlal Shah alias Jiwanlal Maganlal Shah be detained in a jail in Delhi;

And whereas the consent of the Central Government has been obtained to the detention of the said Pratap Keshavlal Shah alias Jiwanlal Maganlal Shah in the Province of Delhi;

Now, therefore, in exercise of the powers conferred by sub-section (4) read with sub-section (5) of section 3 and of the powers conferred by section 5, of the said Ordinance and in partial modification of the said Government Order No. S.D.V/-153 dated the 26th September 1944 the Government of Bombay is pleased to direct that the said Pratap Keshavlal Shah alias Jiwanlal Maganlal Shah be detained in such place in the Province of Delhi as the Chief Commissioner, Delhi, may from time to time determine.

By order of the Governor of Bombay.

Secretary to the Government of Bombay,
Home Department.

21-22

O.R.

Whereas by Government Order No. S.D.V. /-153, dated the 26th September 1944 issued under section 3 of the Restriction and Detention Ordinance, 1944 (Ordinance No.III of 1944), the Government of Bombay directed that the person known as Khalil Sharafuddin be detained in a jail in Delhi;

And whereas the consent of the Central Government has been obtained to the detention of the said Khalil Sharafuddin in the Province of Delhi;

And whereas by Government Order No. S.D.V./-153 dated the 26th October 1944 the Government of Bombay directed that the said Khalil Sharafuddin be detained in the Red Fort, Delhi;

Now, therefore, in exercise of the powers conferred by sub-section (4) read with sub-section (5) of section 3 and of the powers conferred by section 5, of the said Ordinance and in partial modification of the said Government Order No. S.D.V./153 dated the 26th Sept., 194 and in supersession of the said Govt. Order Nos. S.D.V/153 dated the 26th Oct., 1944 the Govt. of Bombay is pleased to direct that the said Khalil Sharafuddin be detained in such place in the Province of Delhi as the Chief Commissioner, Delhi, may from time to time determine.

By order of the Governor of Bombay,

Secretary to the Government of Home Department.